

Montana Water Court
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**MONTANA WATER COURT
UPPER MISSOURI DIVISION
MISSOURI RIVER ABOVE HOLTER DAM
BASIN (41I)
PRELIMINARY DECREE**

CLAIMANT: Martin H. Kimm

OBJECTORS: Martin H. Kimm; Willis Hossfeld Jr.; Doris
Hossfeld; Ruth Hunsaker

NOTICE OF INTENT TO APPEAR: United States, DOI Bureau
of Reclamation

CASE 41I-2068-R-2025

41I 6748-00

41I 36107-00

ORDER GRANTING MOTION TO AMEND AND CLOSING CASE

Claims 41I 6748-00 and 41I 36107-00 were included in the Preliminary Decree for Upper Missouri River above Holter Dam, Basin 41I, issued June 24, 2022. Claimant and sole owner of the claims, Martin H. Kimm (“Kimm”), filed self-objections to both claims. Kimm’s objection stated, “The elements of this water right should be corrected to include storage in Plunkett Lake.”

The United States Bureau of Reclamation (“BOR”), filed a notice of intent to appear to claim 4I 36107-00. The claims were subject to issue remarks stating that in 1997, Willis Hossfeld Jr., Doris Hossfeld, and Ruth Hunsaker filed late objections to the claims. This case was consolidated to address Kimm’s self-objections, the BOR’s notice of intent to appear, and the issue remarks.

A deadline was set for late objectors Willis Hossfeld Jr., Doris Hossfeld, and Ruth Hunsaker to file a statement indicating whether they intended to pursue their objections.

(Doc. 1.00). The order stated if nothing was filed, the late objections would be dismissed. Nothing was filed; therefore, the late objections were dismissed. (Doc. 3.00).

On February 4, 2026, Claimant Kimm filed an Unopposed Motion to Amend Decree of Water Right Claims 41I 6748-00 and 41I 36107-00 to Include Reservoir Storage in Plunkett Lake (“Motion”). (Doc. 11.00). Kimm requests claims 41I 6748-00 and 41I 36107-00 be combined into a single water right, under claim number 41I 6748-00 for 4.50 CFS and irrigation of 735.00 acres. Kimm requests a reservoir record be added to the combined claim, as reflected in the objection, to identify storage in Plunkett Lake. *Id.*

As explained in the Motion, claims 41I 6748-00 and 41I 36107-00 were based on an undivided one-half interest in the same February 24, 1869 water right from Mammoth Spring with a 4.50 CFS flow rate. (Doc. 11.00, p. 3). Mammoth Spring is tributary to Warm Springs Creek. Claim 41I 6748-00 was filed for 290.00 acres of irrigation. Claim 41I 36107-00 was filed for 445.00 acres of irrigation. *Id.* According to the information remark on the claims, “Mammoth Springs arise in Plunkett Lake which is a reservoir on Warm Springs Creek. The water is released from a gateworks in the dam impounding Plunkett Lake. This right is for the direct flow of Mammoth Springs.” *Id.* As described in the remark, Plunkett Lake is a reservoir on Warm Springs Creek. Kimm asserts the lake should be identified as associated with the right.

Provided with the Motion was the affidavit of Martin H. Kimm, explaining Kimm’s knowledge of the land associated with claim 41I 6748-00 and history of Plunkett Lake. With the affidavit were various newspaper articles from the early 1900s documenting use of the Lake. Plunkett Lake was in existence by at least 1905. (Doc. 11.00, p. 5-6). Originally, the lake was developed for waterfowl habitat, sport angling, and later a commercial fish farm. *Id.* According to Kimm, sometime prior to July 1, 1973, use of lake water was changed to irrigation purposes. *Id.*

Kimm requests the Court amend the rights to consolidate the undivided interest into one 4.50 CFS claim with a February 24, 1869 priority date under claim number 41I 6748-00. (Doc. 11.00, p. 1-2). Kimm requests that the combined claim 41I 6748-00 reflect use of Plunkett Lake as follows:

Dam Height:	20 Feet
Depth:	17 Feet
Surface Area:	22 Acres
Capacity:	149.6 Acre-Feet

Id.

Additionally, Kimm requests two remarks be added to the abstract of the combined claim. (Doc. 11.00, p. 11-12). The first remark requested identifies the claim as primarily a direct flow system. The information remark limiting the claim to direct flow of Mammoth Springs would be removed. The second remark requested states the claim is incidentally used for fish and wildlife purposes. *Id.* Further, pursuant to the Motion, since 41I 6748-00 is intended to reflect the combined claim, 41I 36107-00 would be dismissed. *Id.*

On February 18, 2026, the BOR filed a statement indicating that the Motion to amend, including the dismissal of claim 41I 36107-00 would resolve the notice of intent to appear so long as no other changes were made to claim 41I 6748-00, outside those proposed in the Motion. (Doc. 12.00).

A properly filed Statement of Claim is prima facie proof of its content. Mont. Code Ann. § 85-2-227. Claimants objecting to their own rights have the burden to prove, by a preponderance of the evidence, that the prima facie proof is contradicted and overcome and to show the claim does not reflect beneficial use of the right as it existed prior to July 1, 1973. Rule 19, W.R.Adj.R. Rule 9(a) of the Water Right Adjudication Rules requires notice of objections filed through an objection list. Pursuant to Section 85-2-233(6), MCA, and Rule 10, W.R.Adj.R., claimants may amend their own claims by specifying the amendment and the grounds for the amendment. The Water Court determines whether notice of the amendment is required.

Kimm filed an objection to claims 41I 6548-00 and 41I 36107-00 in the Preliminary Decree. Kimm's objection specifically stated Kimm's position that Plunkett Reservoir should be added. Thus, other water users had notice of Kimm's objection through the objection list in Basin 41I. No further notice is required. As an objector requesting to amend its own claim, Kimm had the burden to prove by a preponderance of the evidence that Plunkett Lake should be added and that the claims should be combined

into one right. The two claims in this case are based on the same February 24, 1869 right and may be combined back into one claim. Kimm provided sufficient evidence of use of Plunkett Lake associated with the claim.

Therefore, it is

ORDERED that the Motion to Amend is GRANTED. Abstracts reflecting the amendments are attached for review.

ORDERED that the issue remarks are resolved and BOR's notice of intent to appear is DISMISSED.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Ruth Hunsaker
101 Hossfeld Lane
Toston, MT 59643
(Return mail received)

Willis Hossfeld Jr.
43 Hossfeld Lane
Toston, MT 59643
(Return mail received)

Doris Hossfeld
607 S Cedar St
Townsend, MT 59844

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Michael JL Cusick
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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 6748-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARTIN H KIMM
6293 W DRY CREEK RD
MANHATTAN, MT 59741-8012

Priority Date: FEBRUARY 24, 1869

Type of Historical Right: FILED

Purpose (Use): IRRIGATION

Irrigation Type: SPRINKLER

THIS WATER RIGHT IS INCIDENTALLY USED FOR FISH AND WILDLIFE PURPOSES.

Flow Rate: 4.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
PRIMARILY A DIRECT FLOW SYSTEM; VOLUME NOT DECREED.

Climatic Area: 3 - MODERATE

Maximum Acres: 735.00

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRINGS CREEK

Source Type: SURFACE WATER

ALSO KNOWN AS MAMMOTH SPRINGS

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENENE	27	4N	1E	BROADWATER

Period of Diversion: APRIL 1 TO NOVEMBER 30

Diversion Means: HEADGATE

MAMMOTH SPRINGS ARISE IN PLUNKETT LAKE WHICH IS A RESERVOIR ON WARM SPRINGS CREEK. THE WATER IS RELEASED FROM A GATEWORKS IN THE DAM IMPOUNDING PLUNKETT LAKE.

Reservoir: ONSTREAM **Reservoir Name:** PLUNKETT LAKE

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NENENE	27	4N	1E	BROADWATER

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 17.00 FEET

Surface Area: 22.00 ACRES

Capacity: 149.60 ACRE-FEET

Period of Use: APRIL 1 TO NOVEMBER 30

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		SWNE	14	4N	1E	BROADWATER
2	30.00		SENE	14	4N	1E	BROADWATER
3	120.00		SE	14	4N	1E	BROADWATER
4	100.00		SW	14	4N	1E	BROADWATER
5	30.00		W2	13	4N	1E	BROADWATER
6	85.00		E2	14	4N	1E	BROADWATER
7	330.00			23	3N	1E	BROADWATER
Total:	<u>735.00</u>						

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, ABOVE HOLTER DAM
BASIN 41I**

Water Right Number: 411 36107-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: **DISMISSED**

Owners: MARTIN H KIMM
6293 W DRY CREEK RD
MANHATTAN, MT 59741-8012

Priority Date:

Type of Historical Right:

Purpose (Use): IRRIGATION

Flow Rate:

Volume:

Source Name: SPRING, UNNAMED TRIBUTARY OF WARM SPRINGS CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

Period of Use:

Place of Use:

Remarks:

THIS CLAIM WAS DISMISSED BY ORDER OF THE WATER COURT.